

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONALD J. GIORDANO,

Index No. 08-cv-5502

Plaintiff,

- against -

ANSWER

COHEN & SLAMOWITZ, LLP,

Defendant.

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Defendant COHEN & SLAMOWITZ, LLP, by and through their attorneys CLAUSEN MILLER P.C., as and for a Verified Answer to Plaintiff's Complaint, dated June 18, 2008, allege, upon information and belief, as follows:

ANSWERING PLAINTIFF'S PRELIMINARY STATEMENT

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "1" of Plaintiff's Complaint.

JURISDICTION

2. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "2" of Plaintiff's Complaint.

3. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "3" of Plaintiff's Complaint.

4. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "4" of Plaintiff's Complaint.

PARTIES

5. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “5” of Plaintiff’s Complaint.

6. Admits the allegations in Paragraph “6” of Plaintiff’s Complaint.

7. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “7” of Plaintiff’s Complaint.

FACTUAL ALLEGATIONS

8. Admits the allegations in Paragraph “8” of Plaintiff’s Complaint.

9. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “9” of Plaintiff’s Complaint.

10. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “10” of Plaintiff’s Complaint.

11. Denies the allegations contained in [the first] Paragraph “11”.

11. Denies the allegations contained in [the second] Paragraph “11”.

12. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “12” of Plaintiff’s Complaint.

13. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph “13” of Plaintiff’s Complaint.

14. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "14" of Plaintiff's Complaint.

15. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "15" of Plaintiff's Complaint.

16. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "16" of Plaintiff's Complaint.

17. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "17" of Plaintiff's Complaint.

18. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "18" of Plaintiff's Complaint.

19. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "19" of Plaintiff's Complaint.

20. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "20" of Plaintiff's Complaint.

21. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph "21" of Plaintiff's Complaint.

ANSWERING PLAINTIFF'S COUNT I

22. With respect to the reallegations contained in Paragraph "22" of Plaintiff's Complaint, the Defendants repeat and reallege each and every denial contained in Paragraphs "1" through "21" hereof as if fully set forth at length herein.

23. Deny each and every allegation contained in Paragraphs “23” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

24. Deny each and every allegation contained in Paragraph “24” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

25. Deny each and every allegation contained in Paragraph “25” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

26. Deny each and every allegation contained in Paragraph “26” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

ANSWERING PLAINTIFF’S COUNT II

27. With respect to the reallegations contained in Paragraph “27” of Plaintiff’s Complaint, the Defendants repeat and reallege each and every denial contained in Paragraphs “1” through “26” hereof as if fully set forth at length herein.

28. Deny each and every allegation contained in Paragraph “28” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

29. Deny each and every allegation contained in Paragraph “29” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

30. Deny each and every allegation contained in Paragraph “30” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

31. Deny each and every allegation contained in Paragraph “31” of Plaintiff’s Complaint, and respectfully refers all questions of law to the Court.

ANSWERING PLAINTIFF'S COUNT III

32. With respect to the reallegations contained in Paragraph "32" of Plaintiff's Complaint, the Defendants repeat and reallege each and every denial contained in Paragraphs "1" through "31" hereof as if fully set forth at length herein.

33. Deny each and every allegation contained in Paragraph "33" of Plaintiff's Complaint, and respectfully refers all questions of law to the Court.

34. Deny each and every allegation contained in Paragraph "34" of Plaintiff's Complaint, and respectfully refers all questions of law to the Court.

35. Deny each and every allegation contained in Paragraph "35" of Plaintiff's Complaint, and respectfully refers all questions of law to the Court.

36. Deny each and every allegation contained in Paragraph "36" of Plaintiff's Complaint, and respectfully refers all questions of law to the Court.

37. Deny each and every allegation contained in Paragraph "37" of Plaintiff's Complaint, and respectfully refers all questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

38. Whatever injuries and/or damages the Plaintiff may have sustained at the time and place mentioned in the Verified Complaint and/or as a result of the occurrence alleged in the Verified Complaint, all of which is denied by this answering Defendant, were caused in whole or in part by the culpable conduct of the Plaintiff. The amount of damages recovered, if any, shall therefore be diminished in the proportion which the culpable conduct, attributable to Plaintiff, bears to the culpable conduct which caused said injuries.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

39. All risks and danger of loss or damages connected with a situation alleged in the Complaint were at the time and place mentioned obvious and apparent and were known by the Plaintiff and voluntarily assumed by Plaintiff.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

40. If the injuries and damages were sustained by the Plaintiff at the time and place and in the manner alleged in the Verified Complaint herein, such damages and injuries are attributable, in whole or in part, to the culpable conduct of third parties, and if any damages are recoverable against the answering Defendant, the amount of such damages shall be diminished in the proportion that the culpable conduct attributable to said third parties bears to the culpable conduct that caused the damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

41. The injuries and damages alleged were caused by the culpable conduct of some third person or persons over whom Defendant neither had nor exercised control.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

42. Any and all risks, hazards, defects and dangers alleged were of an open, obvious, and apparent nature and were inherent and known, or should have been known, to the Plaintiff, and the Plaintiff willingly and voluntarily assumed all such risks, hazards, defects and dangers. If it is determined that the Plaintiff assumed the risks of the activities in which they were engaged, the answering Defendant plead said facts in diminution of damages in the proportion that the culpable conduct attributable to the Plaintiff bears to the culpable conduct that caused the damages complained of herein.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

43. Plaintiff failed to mitigate his damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

44. The claims alleged in the Amended Complaint are barred by the doctrine of waiver.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

45. This Court lacks jurisdiction over defendant.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

46. Service of the Summons and Complaint on defendant was not accomplished in the proper and designated manner set forth in the Federal Rules and therefore the Court has not obtained personal jurisdiction over this answering Defendant.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

47. The Complaint fails to state any recognizable cause of action against the Defendant, as a matter of law.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

48. The claims alleged in the Complaint are barred by the doctrine of estoppel.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

49. The negligence of those responsible for the occurrence alleged in the Complaint constituted a separate, independent, superseding, intervening culpable act or acts which constitute the sole proximate cause of the accident or occurrence alleged.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

50. This action was commenced by Plaintiff with the knowledge and information that this Answering Defendant is wholly and completely not responsible for Plaintiff's injuries and was instituted notwithstanding the causes of action are frivolous and brought in bad faith.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

51. Plaintiff is barred from asserting all claims by the doctrine of res judicata.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

52. The claims alleged in the Amended Complaint are barred by the doctrine of unjust enrichment.

WHEREFORE, Defendant, COHEN & SLAMOWITZ, LLP, hereby demands judgment dismissing Plaintiff's Complaint as against them together with the costs and disbursements of this action, including attorney's fees, and for such other and further and different relief as this Court may deem just, equitable and proper.

Dated: New York, New York
August 11, 2008

CLAUSEN MILLER P.C.

By: 

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TO: **RANDALL S. NEWMAN, P.C.**
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